Supreme Court, U.S.
FILED
AUG 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 85-998

# In the Supreme Court of the United States

OCTOBER TERM, 1986

UNITED STATES OF AMERICA, PETITIONER

*v.*

RONALD DALE DUNN

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

## JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI
FILED DECEMBER 10, 1985
CERTIORARI GRANTED JUNE 23, 1986

50 pp

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 81-1200

UNITED STATES OF AMERICA, APPELLEE

*v.*

RONALD DALE DUNN, APPELLANT

**RELEVANT DOCKET ENTRIES**

| DATE | FILINGS—PROCEEDINGS |
|---|---|
| 5/7/81 | Appeal docketed. |
| 3/17/82 | Argued and submitted. |
| 5/7/82 | Opinion rendered; reversed and remanded. |
| 6/28/82 | Order denying rehearing. |
| 9/29/82 | Notice of filing of certiorari petition on 9/22/82. |
| 5/23/84 | Judgment of Supreme Court remanding to court of appeals. |
| 7/16/85 | Opinion on remand from U.S. Supreme Court. Reversed. Portions of original opinion reinstated. |
| 9/11/85 | Order denying suggestion for rehearing en banc. |
| 11/14/85 | Order denying rehearing with suggestion for rehearing en banc; Further, the order denying the petition for panel rehearing is reinstated and said petition is denied. (w/poll—the order dated 9/11/85 denying rehearing and rehearing en banc was suspended). |
| 11/26/85 | Judgment as mandate issued to clerk. |

| DATE | FILINGS–PROCEEDINGS |
|---|---|
| 12/9/85 | Dissents of Judges Jolly (with whom Judges Davis and Jones join) and Judge Gee to denial of suggestion for rehearing en banc filed on 11/14/85. |
| 12/16/85 | Dissent to denial of suggestion for rehearing en banc by Judge Higginbotham, joined by Judge Reavley. |
| 12/23/85 | Notice of filing certiorari in Supreme Court on 12/10/85. |
| 1/17/86 | Order that the judgment of this Court entered on 7/16/85 and issued as mandate on 11/26/85 is recalled and vacated. The Court will enter a new judgment in this cause in due course. |
| 2/4/86 | Opinion reinstating opinion of May 7, 1982. Reversed and remanded. |
| 2/26/86 | Judgment as mandate issued to clerk. |

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Cr-80-00089-01

UNITED STATES OF AMERICA

*v.*

RONALD DALE DUNN

Judge: Judge Nowlin Case Filed: 12/5/80

| DATE | FILINGS–PROCEEDINGS |
|---|---|
| 11/10/80 | Filed magistrate complaint (Dkt'd 11/24/80). |
| | Arrest warrant issued. (Dkt'd 11/24/80). |
| | Defendant arrested (Dkt'd 11/24/80). |
| | Defendant's first appearance (Dkt'd 11/24/80). |
| 12/5/80 | Filed indictment (Dkt'd 12/9/80). |
| 12/15/80 | Waiver of personal appearance at arraignment and entry of plea not guilty (Dkt'd 12/15/80). |
| | Defendant appears with counsel (Dkt'd 12/15/80). |
| 1/5/81 | Motion to suppress evidence filed (MOT #11) (Counts 1-4) (Evidence Seized in Blanco County) (Dkt'd 1/8/81). |
| 2/13/81 | Hearing on pre-trial motions held 2/13/81 (Counts 1-4) (Dkt'd 2/18/81). |
| | Motion to suppress evidence denied (MOT #11) (Evidence seized in Blanco County) (Dkt'd 2/18/81). |
| 3/2/81 | Voir dire begins–jury (Counts 1-4) (JUDGE HILL) (Dkt'd 3/11/81). |
| | Jury impaneled (Counts 1-4) (Dkt'd 3/11/81). |
| | Trial begins–jury (Counts 1-4) (JUDGE HILL) (Dkt'd 3/11/81). |

| DATE | FILINGS – PROCEEDINGS |
|---|---|
| 3/3/81-3/6/81 | Trial held – jury (JUDGE HILL) (Dkt'd 3/11/81). |
| 3/6/81 | Jury verdict of guilty (Counts 1-4) (Dkt'd 3/11/81). |
| 4/24/81 | Sentencing of defendant (Counts 1-4) (JUDGE HILL) (Dkt'd 4/30/81). |
| 5/5/81 | Notice of appeal (Dkt'd 5/5/81). |

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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Criminal No. A80CR89

INDICTMENT

[Vio: 21 U.S.C. § 846—Conspiracy to Manufacture a Schedule II Controlled Substance; 21 U.S.C. § 841(a)(1)—Manufacturing a Schedule II Controlled Substance; 18 U.S.C. § 2—Aiding and Abetting; 21 U.S.C. § 841(a)(1)—Possession with Intent to Distribute a Schedule II Controlled Substance]

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UNITED STATES OF AMERICA, PLAINTIFF

*v.*

RONALD DALE DUNN AND ROBERT LYLE CARPENTER, DEFENDANTS

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**THE GRAND JURY CHARGES**

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**COUNT ONE**
**[21 U.S.C. § 846]**

That beginning on or about July 23, 1980, and continuing until on or about November 8, 1980, in the Western District of Texas, and elsewhere, Defendants

RONALD DALE DUNN

AND

ROBERT LYLE CARPENTER

unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit the following offenses:

(1) to unlawfully, knowingly, and intentionally manufacture phenylacetone, a Schedule II Controlled

Substance, contrary to Title 21, United States Code, Section 841(a)(1);

(2) to unlawfully, knowingly, and intentionally manufacture amphetamine, a Schedule II Controlled Substance, contrary to Title 21, United States Code, Section 841(a)(1); and

(3) to unlawfully, knowingly, and intentionally possess amphetamine, a Schedule II Controlled Substance, with intent to distribute the same, contrary to Title 21, United States Code, Section 841(a)(1), all in violation of Title 21, United States Code, Section 846.

**COUNT TWO**
**[21 U.S.C. § 841(a)(1)]**

1. Between on or about July 23, 1980, and on or about November 8, 1980, in the Western District of Texas, Defendant

RONALD DALE DUNN

unlawfully, knowingly, and intentionally did manufacture phenylacetone, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. That Defendant ROBERT LYLE CARPENTER aided, abetted, counseled, induced, and procured the commission of the offense alleged above, in violation of Title 18, United States Code, Section 2.

**COUNT THREE**
**[21 U.S.C. § 841(a)(1)]**

1. Between on or about July 23, 1980, and on or about November 8, 1980, in the Western District of Texas, Defendant

RONALD DALE DUNN

unlawfully, knowingly, and intentionally did manufacture amphetamine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. That Defendant ROBERT LYLE CARPENTER aided, abetted, counseled, induced, and procured the commission of the offense alleged above, in violation of Title 18, United States Code, Section 2.

**COUNT FOUR**
**[21 U.S.C. § 841(a)(1)]**

1. On or above November 8, 1980, in the Western District of Texas, Defendant

RONALD DALE DUNN

unlawfully, knowingly, and intentionally did possess with intent to distribute approximately 9.3 pounds of amphetamine, a Schedule II Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. That Defendant ROBERT LYLE CARPENTER aided, abetted, counseled, induced, and procured the commission of the offense alleged above, in violation of Title 18, United States Code, Section 2.

A TRUE BILL:

[sig illegible]
*Foreman*

JAMIE C. BOYD
*United States Attorney*

By: /s/ JACK C. O'DONNELL
Jack C. O'Donnell
*Assistant United States Attorney*

**TRANSCRIPT OF PROCEEDINGS**

Suppression Hearing
February 13, 1981

[67] THE COURT: There is no reason to sever it unless you need to, Mr. O'Donnell.

MR. O'DONNELL: Your Honor, it might be better to keep them separate, to tell you the truth. I think it might be less confusing.

MR. GERSON: Either way is fine with us, Your Honor.

THE COURT: All right. You may proceed. Let's go with the Motion to Suppress, not the confession but the matter of suppressing evidence on the ranch.

MR. O'DONNELL: The United States calls Special Agent Ron Gospodarek.

Excuse me, Your Honor. I've got the wrong witness. I need Mr. Green first to identify the charts.

THE COURT: Mr. Newlin may be willing to stipulate, I don't know.

MR. NEWLIN: I think we can stipulate to it, Your Honor. Mr. Green is going to testify—if I can have this agreement—that this was in fact an area that he stepped off and it's a reasonably accurate portrayal of the building and surrounding area of the ranch property at Blanco, Texas.

MR. O'DONNELL: Your Honor, what I don't like about the stipulation is "reasonably accurate." [68] If he'll stipulate that these are accurate drawings of the barn, that Government's Exhibit 14 is an accurate drawing of the barn where the lab was and that Government's Exhibit 13 is an accurate drawing of the house and the surrounding buildings, then we don't need Mr. Green.

MR. NEWLIN: For the purposes of this hearing we will so stipulate, Your Honor.

THE COURT: All right. Then call your next witness.

MR. O'DONNELL: Then in that event I will call Special Agent Ron Gospodarek.

THE COURT: Will you state your full name, please, sir, and spell your last name?

THE WITNESS: Ronald Gospodarek, G-o-s-p-o-d-a-r-e-k.

THE COURT: All right. You may proceed.

RONALD GOSPODAREK,

called as a witness by the plaintiff, and having been duly sworn by the clerk, assumed the stand and testified as follows:

**DIRECT EXAMINATION**

BY MR. O'DONNELL:

Q. How are you employed, sir?

A. Special Agent for the Drug Enforcement Administration.

Q. How long have you been so employed?

[69] A. Approximately 10½ years.

Q. And you're stationed in Houston now?

A. Yes, sir.

Q. Where have you been stationed other times?

A. Minneapolis, Minnesota.

Q. What is your experience in connection with investigation of illegal, clandestine laboratories?

A. I'm the team leader in charge of a group of individuals who pursues these types of investigations.

Q. How many such type investigations have you worked on?

A. Over 50.

Q. Does that include the actual seizure of an illicit laboratory?

A. Yes, it does.

Q. In connection with your experience in these matters have you had occasions to—Well, tell me your background as far as your knowledge of precursor chemicals, smells of contraband chemicals.

A. I have a Bachelor of Science degree in chemistry, particularly with emphasis on organic chemistry.

Q. Have you had experience and training in what chemicals are precursor chemicals to the controlled substances amphetamine and methamphetamine?

A. Oh, yes, we've had extensive training by our chemists and by book knowledge, et cetera, into what chemicals are made [70] up to make certain types of illicit drugs, including methamphetamine and amphetamine.

Q. And have you on numerous occasions seized amphetamine?

A. Yes, I have.

Q. What about phenylacetone? What is that?

A. Currently it's a Schedule II controlled substance. At the previous time it was a major precursor involved in the manufacture of methamphetamine and amphetamine.

Q. In your experience and training have you had occasion to see phenylacetone being manufactured?

A. Yes.

Q. Have you had occasion to smell phenylacetone while it was being manufactured?

A. Yes, I have.

Q. On numerous occasions?

A. On several. This is somewhat of a new law for us and something we've just gotten into, but on several occasions.

Q. All right, Special Agent Gospodarek, I want to direct your attention to November 5, 1980. Were you assigned to a particular case on that date?

A. Yes, I was.

Q. What case were you working on?

A. I was working on the Carpenter investigation.

Q. Is that the case we're here in court on today?

A. Yes, it is.

[71] Q. Mr. Dunn and Mr. Carpenter?

A. Yes, sir.

Q. Where were you on November 5th, 1980?

A. In the morning I was in Houston, Texas, and by mid-afternoon I was in Johnson City, Texas, outside of it.

Q. Where is Johnson City, Texas?

A. It's somewhere west of Austin.

Q. What county is that in?

A. I don't believe I know.

Q. What were you doing after you got to Johnson City?

A. I was on surveillance of a vehicle that we had followed from Houston.

Q. Where did you follow the vehicle to?

A. To what I considered to be a ranch site somewhere outside Johnson City. I believed the county is Blanco.

Q. What was followed to this particular ranch, now?

A. A truck.

Q. Could you describe to the Court—First of all, did you do any research as to the ownership of this particular ranch?

A. I was involved with a group of people on the following day that discussed with the game warden who actually found the ownership of the property.

Q. Where did the game warden determine the ownership of the property?

[72] A. From the county records.

Q. Did he tell you who owned the ranch?

A. Yes.

Q. Who was that?

A. Mr. Dunn.

Q. Could you describe to the Court the general physical description of this ranch in Blanco County?

A. At that time we did not have any idea as to the physical boundaries of the ranch itself, only of the approximate acreage, which was approximately 198 acres.

Q. Did you have occasion to make some aerial photographs of the ranch?

A. Yes, I did.

Q. When did you do those?

A. I believe that was on the afternoon of the 5th.

Q. Was that a DEA airplane?

A. Yes.

Q. Did you take the photographs?

A. Yes, I did.

Q. From your aerial view of the ranch could you basically describe to the Court what we're talking about? Is this an isolated ranch up in the Hill Country?

A. Yes, it is.

Q. Is there a home on the ranch?

A. Yes, there is.

[73] Q. What other buildings are on the ranch?

A. Well, there's a pole barn and then another type of barn and a water tank and a windmill, a garage and a small house adjacent to the actual farm house.

Q. Now, I want to direct your attention to November 5, 1980, in the evening hours. Did you have occasion to go upon Mr. Dunn's land and approach the barn?

A. Yes.

Q. Approximately what time did you start this expedition of yours?

A. It was fairly late in the evening.

Q. Approximately what time?

A. Probably around 10:00 o'clock or so.

Q. It was dark?

A. Very dark.

Q. Was someone with you?

A. Yes.

Q. Who was with you?

A. Officer Martin Fite.

MR. O'DONNELL: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

Q. Special Agent Gospodarek, I'm going to hand you what's been marked as Government's Exhibit No. 1 and ask you sir, if you can identify that?

[74] A. Yes, I can.

Q. What is Government's Exhibit 1?

A. That's one of the aerial photographs that I took of the area of the farm house that we saw the chemicals go into.

Q. Is that Mr. Dunn's house? Is his house depicted in the photograph?

A. Yes, it is.

Q. Is the barn where the lab was found depicted in the photograph?

A. Yes, it is.

Q. Now, prior to coming to court did I ask you to trace with a black pen the route that you took to approach the barn on November 5th?

A. Yes, you did.

Q. Have you done that on the photograph?

A. Yes, I have, in black pencil.

Q. Now, describe to the court the route that you took and the markings on the photograph.

A. The route that I took was an attempt to come into the rear of the ranch toward the back by the barns, and what in essence happened was we got lost and found an open field which I believed to be on the north side of the home—or what we thought at that time was the north side of the home—and we followed this open field to where we ran into the road that ran in front of the house. At that point we just decided [75] to follow the road to try and find the entrance to the ranch, which we had identified in the daytime, which we subsequently did, and we walked a ways down toward a house which is near the entrance to

Mr. Dunn's property but does not belong to Mr. Dunn, to my knowledge, and crossed up into the trees and went in what we felt was the direction the driveway ran back toward the residence.

Q. Have you marked on the photograph in black ink the route that you've just described?

A. Yes, I have.

Q. Now, part of the route you've just described would not be on this picture, is that correct?

A. Correct.

Q. The picture wouldn't include how far out you went?

A. Correct.

MR. O'DONNELL: Your Honor, at this point I would offer into evidence Government's Exhibit No. 1.

THE COURT: I'll allow cross examination.

MR. O'DONNELL: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

Q. (By Mr. O'Donnell): Special Agent Gospodarek, I'm going to hand you what's been marked as Government's Exhibit No. 2 and ask you if you can identify this photograph?

A. Yes, I can.

[76] Q. What is this photograph?

A. This is also the photograph of the ranch area but it particularly concentrates its emphasis upon the two barns and the house, and the route is marked on here which we took on November 5th.

Q. The house and the garage would be in the structure that's at the top of the photograph in Government's Exhibit 2?

A. Yes.

Q. And the barn where the lab was would be at the lower part of the photograph?

A. Yes.

Q. Have you marked with black ink, have you put an "X" on this photograph?

A. Yes, I have.

Q. What is the significance of that "X' on the photograph?

A. This is the approximate area where we first detected a smell emanating from the laboratory.

Q. Tell the Court what happened. First of all, what did you smell?

A. Well, I smelled a very strong odor of what I considered to be phenylacetic acid.

Q. How did you know it was phenylacetic acid?

A. Well, I've smelled phenylacetic acid many times before.

Q. What was the significance to you of smelling that?

[77] A. Well, phenylacetic acid is one of the essential precursors in the method that Mr. Dunn or the chemist in this case was going to be using to make phenylacetone.

Q. And phenylacetone is a controlled substance?

A. Yes.

Q. In Government's Exhibit 2, did I ask you to draw a line from the "X" as to where you went after you smelled the odor you've just decribed?

A. Yes.

Q. Have you done so?

A. Yes, I did.

MR. O'DONNELL: Your Honor, again, I would offer Government's Exhibit 2.

THE COURT: I'll defer until we have cross examination.

Q. (By Mr. O'Donnell): Special Agent Gospodarek, I want to direct your attention now to Government's Exhibit No. 13. Can you see that, sir?

A. Yes, sir.

Q. Do you recognize that to be the Dunn ranch and the barn where the lab was?

A. Yes, sir.

MR. O'DONNELL: Your Honor, I would offer into evidence Government's Exhibit 13, which was by the stipulation.

[78] THE COURT: G-13 is admitted for the purpose of this hearing.

MR. GERSON: No objection.

(The exhibit marked "G-13" was received in evidence.)

MR. O'DONNELL: Your Honor, do you wish the witness to step down?

THE COURT: He may; as long as you can hear what he says.

MR. O'DONNELL: All right. I'd like for you to take this pointer and point out to the Court where you were basically when you first smelled the odor you've described.

THE WITNESS: Well, the first time was in this area out here, which is not on this particular chart.

Q. The specific spot would be depicted on Government's Exhibit No. 2 where you've marked as "X"?

A. Yes, that's when we began smelling it, yes.

Q. Now, after you smelled that odor, state for the Court where you went and what you did.

A. After we first smelled the odor, we had caught a glimpse of the first barn and we made our way to the first barn, which is an open barn, and at that point there was nothing in there but empty boxes. From that point, then, we moved, homed in on the direction that we assumed the smell was coming from, which was the next outbuilding, which was the [79] big barn, and we did so by coming along this area here, secreting ourselves behind this tank for a period of time, and eventually working ourselves up to the corner of this barn here.

Q. State specifically how you got to the corner of the barn. Did you cross this fence?

A. Yes, I believe we had to cross this fence here. We went this route, and we went right up into this area right here.

Q. What did you do then?

A. At that point I could hear a motor running, like a pump motor of some sort, and we found a door over here. There is a door on this side which was locked or nailed shut, boarded shut, and at this point we started to go around to the rear when we observed this pickup camper which was disabled in the rear. We spent a considerable length of time here trying to determine if there was someone in that camper or not. Eventually we went around to this side of the building and determined that there was nothing to see on this side. I believe this is open in here eventually. Along the edge here under this, kind of like a brick, and there is a small crack between the brick and the tin as it comes down, and the odor was extremely strong coming from inside this corner of the building.

Q. The odor that you've previously described?

[80] A. Yes, the same odor, the phenylacetic acid smell.

Q. All right, sir. Go ahead.

A. We came back around, we crossed a small wooden type fence here, which put us right underneath a type of a tin overhang and in front of us was a wooden locked gate, a long gate. If it swung open it would be the length of the judge's desk, or maybe a little longer.

Q. Where was that, now?

A. That was right here.

Q. How high was that gate?

A. It probably came up to my waist, estimated.

Q. Was that gate open or shut?

A. It was shut and it was locked.

Q. Was there anything above that gate?

A. Yes, there was.

Q. What was that?

A. A fish netting, kind of a netting, that was hanging from the ceiling down to the gate.

Q. Did you cross over that gate and go into the barn?

A. No.

Q. Did you stand outside the gate?

A. We stood right at the gate.

Q. What did you do?

A. Well, we had flashlights with us and the smell was very, very strong at this point. We could hear the motor [81] running very loudly. I had a flashlight and we tried to get ourselves in the pòsition to block the house because the house was behind us. The house was dark but we didn't know if there was anyone home or if they were asleep.

MR. NEWLIN: Your Honor, I'm going to object to this type of answer. He was asked what he did. He still hasn't got to that point. I think it's clearly non-responsive.

THE COURT: You may proceed. What did you do?

THE WITNESS: At that point I turned my flashlight on and I observed three chemical—what I would call reflux setups, operating in the corner of the lab, along with numerous bottles and cans and boxes that I could recognize as containing chemical items. A complete chemistry lab is what it was.

Q. (By Mr. O'Donnell): Tell the Court what—You mentioned the word "reflux"?

A. Yes.

Q. What are you speaking of?

A. Well, he had several large, for simplification, pots, and in these pots was material that was under a constant temperature. Reflux is a situation where, in chemistry, is how we cook things. And it's hooked up so that it cooks but yet it has a condenser on it but water is running through it to keep the vapors cool and keep the actual reactor from [82] escaping. And it was this type of chemical process that was in process when I was at the laboratory.

Q. In your opinion was this a laboratory you were looking at?

A. I was looking at a phenylacetone laboratory in my estimation.

Q. Could you smell any smell?

A. Yes, I could smell phenylacetic acid, which is a dominant smell in this type of a situation.

Q. What did you and police officer Fite do then?

A. Well, we then crossed back across, around in the back.

Q. Let's be particular. Start with where you came out and where you went.

A. Well, we went back around the side of the building. We had been out in this area in direct view of the home. We went behind, crossed behind the camper. We had already determined there was no one in the camper.

Q. Excuse me, Special Agent Gospodarek. Let me ask you specifically, when you came out from this area where you were looking into the laboratory where did you specifically go?

A. To the best of my recollection we went back out around the edge of the way we came.

Q. You crossed over this fence?

A. Yes, the same fence.

[83] Q. All right. Go ahead, sir.

A. Then we went around behind the building, all the way around, came up on this side, walked along the edge of the building, eventually made ourselves back down into the trees and down to the edge of the garage.

Q. Down to this area?

A. Yes.

Q. What did you do down in this area?

A. At this point we got another smell toward the rear of the garage. We looked in the carport, which was an open carport, to see if there were any vehicles. There were none. We attempted to see if there were any vehicles in the garage but all the windows and the doors, everything was locked up.

Q. Did you cross the fence over into the yard of the house?

A. No, we didn't need to go into the house. We got back to here. We felt we were close enough, and we made our withdrawal.

Q. How did you withdraw?

A. We withdrew into the woods and down the road.

Q. Which direction? This direction?

A. Yes, back into the woods and down the road.

THE COURT: Is this a convenient time for recess, counsel?

MR. O'DONNELL: Yes, sir.

[84] THE COURT: It's 3:15, counsel. We'll be in recess until 25 after 3:00.

(Recess from 3:15 to 3:25 P.M.)

THE COURT: You may proceed.

MR. O'DONNELL: May I approach the witness, Your Honor?.

THE COURT: You may.

Q. (By Mr. O'Donnell): Special Agent Gospodarek, I want to hand you again Government's Exhibit 1 and again direct your attention back to November 5th. I ask you in black ink to trace your route. In the left corner, in the left bottom corner of the photograph, Government's Exhibit No. 1, you've got two little marks that look like an eleven. What is that?

A. That signifies we walked that to the road, and those two marks signify the road.

Q. That would be the road, the public road in front of the entrance to the ranch?

A. Yes, sir.

THE COURT: The public road on that photograph, G-1, is not shown on G-18?

THE WITNESS: That's correct, Your Honor.

Q. (By Mr. O'Donnell): And to clarify the photograph some more, as I understand it, on that same day, once you got to the public road you followed the public road back

up past the entrance, or near the entrance to the ranch and then [85] you've drawn another blank line where you reentered the property?

A. Yes, approximately. The photograph does not allow me to say exactly where it was.

Q. Now, in the affidavit for the search warrant filed by Special Agent Surovec, it indicates that after you smelled the odor that you then crossed a fence. Which fence? Directing your attention to Government's Exhibit 13, which fence did you cross after you smelled the odor?

A. This one here. The one that was on the edge of the first pole barn.

Q. The one that connects there with what is called the pole barn?

A. Yes, sir.

Q. Now, I want to direct your attention to the next day, November 6th, 1980. Did you have occasion on that day to go back upon Mr. Dunn's property?

A. Yes, on the 6th.

Q. On how many occasions?

A. Twice.

Q. Let's start with the first one. Approximately what time did you make the first entry into Mr. Dunn's property?

A. Early afternoon, say, around 1:00 o'clock, 12:30.

MR. O'DONNELL: Your Honor, may I approach the witness?

[86] Q. (By Mr. O'Donnell): I'm going to hand you Government's Exhibit No. 1 again and ask you to, referring to Government's Exhibit No. 1, the photograph, tell the Court the general route that you took.

A. Well, it was basically the same route we took the first day. We started out in the woods and then found that same open field, walked down the open field, at this time to a point that I estimate it would take us on a course when we cut in toward the farm house.

Q. Is it correct that you followed the same route as you did the day before, basically, up until you get to some red ink, which I've asked you to mark on the picture?

A. Yes.

Q. Now, what is the significance of the red mark, the red ink?

A. The red marking is the route, the approximate route, that I traversed on the 6th, as opposed to the black one, which we traversed on the 5th.

Q. Now, to make it clear, even on the 6th, you went the black route up to the red ink?

A. Yes.

Q. Now, tell us, explain the markings of the red ink now where you went.

A. Well, we attempted to come in once again from the back of the barn, and I cut into the trees approximately where [87] I thought I'd come out by the back of the barn.

Q. Now, have you depicted this in red ink on the photograph?

A. Yes, I did.

Q. All right. Go ahead, sir.

A. But unforunately I came out in front of the house and ran into the road that led to the place, so at that point then we just continued across the road that we found led to the home, to the outside, again, similar to the last part of the route we took the first time—

Q. On the 5th?

A. Yes, sir. And we came up to the edge of the trees. Since it was daylight we crossed to the opposite side of the outside fence and then proceeded up to the outside part of the fence.

Q. Have you marked that route with red ink?

A. Yes, I have.

Q. I hand you now Government's Exhibit 2, which is the other photograph, and did you mark on that photograph with red ink your route on November 6th?

A. Yes, this would be a continuation of Government's Exhibit 1, and it shows to the edge of the picture in red the route that I continued to take on the 6th.

Q. Now, directing your attention to Government's Exhibit 13 with the pointer, where are you now after we leave [88] Government's Exhibit 2?

A. For clarification for His Honor, there is another fence running along here, outside. There are trees all along in here. We kept to the trees until the trees ran out in one specific area where there is a clearing visible from the home. We then went wide, got over the outside fence, and it's somewhat, it's not a flap but it has some dip and some hills and gulleys to it. They're not steep but they're enough that you can creep down along and stay low to the ground and be out of sight from the home, which we did. We wound up at a fence that intersects this fence in this juncture here. We then followed that fence line along—

Q. All right. Let me ask you, who was with you on this occasion?

A. This is agent Fred Thomas.

Q. A DEA agent?

A. Yes.

Q. All right. Go ahead, sir.

A. We followed along to the back, behind this pole barn, back behind here, until we got in a position where we were invisible from the home because of the barn where the lab was. I then cut directly up to the back here where I got, where, once again, we checked the smell that came out of the little narrow opening at the corner there.

Q. The same smell, the same odor?

[89] A. Yes, exactly.

Q. What did you and Special Agent Thomas do then?

A. We then checked the area once again to see if there was anyone about, crossed back along to the side here, and back over that same fence, and into the same area and looked into the lab through the fish net again, saw that everything was the same as it was the previous day.

Q. Did you or Special Agent Thomas actually enter that door that you've described, the door that came up to about you waist?

A. No, we did not, We just stood, once again, right outside the door, looked through the netting, and then made our withdrawal back across the fence and off into the woods.

Q. Now, when you're standing there just outside the door, or the gate, as you've described it, looking into the lab, are you underneath part of that shed?

A. Yes, we're underneath the overhang portion.

Q. But that all open?

A. It's all open.

Q. Now, again, where did you and Thomas exit the land?

A. From here. We crossed the same wooden fence, out the back. along the side here, into the cover of the trees, which is a grove of trees. It's a tree belt that runs along here, and back off that way.

Q. Now, all of the surrounding land is uninhabited land, [90] is that correct?

A. Yes, surrounding this way. It's all uninhabited. The only other home that I found was right over in here somewhere.

Q. Is that on Mr. Dunn's property?

A. No, I believe that belongs to someone else.

Q. Now, these pins, or these fences as you've described them, what type of pin is this, the fences that connect here with the barn?

A. This is a cattle situation. To the best of my knowledge it would be a situation where this was an open barn for cattle, and there's a cattle feed here that swings both ways and the rest of it is nothing more than fences, barbed-wire type.

Q. What about this fence right here, the one that you crossed first on November 5? What type of fences are they?

A. These are all one, two, or three-strand barbed wire fences.

Q. Just typical ranch type fence?

A. Some of them are in ill repair. Some of them are in good repair.

Q. Did you ever have occasion to observe the fences that surrounded the total acreage, parts of the fence?

A. Yes, there are a lot of fences, a lot of different sets of fences and they're all the barbed wire type.

[91] Q. Now, the second entry on the 6th, approximately what time was that?

A. That was somewhere around 7:00 o'clock or so in the evening.

Q. 7:00 P.M.?

A. Yes.

Q. And who was with you on this occasion?

A. Well, there were four of us on this occasion, Special Agent Thomas and then two other special agents from the Austin office that were with us, that were with Thomas and I, but on this occasion I was the only one to get close to any of the Dunn property.

Q. All right. Tell the Court on that second entry on the 6th where you went.

A. I went right up the driveway, into the woods, near the driveway, up the driveway in a position to see if there were any cars in the carport.

Q. Okay. How far away from the house were you, approximately?

A. Oh, I would say I got within a hundred yards, or 50 yards, just so I could make out the home and the carport.

Q. So you would be out in the woods?

A. I was on the driveway at this point toward the woods.

Q. And that would be approximately 100 yards away from the house?

[92] A. It's hard to judge. It was very dark. I would say anywhere from 100 to 50 yards from the home, looking up into the carport.

Q. And what did you do then after you looked into the carport?

A. There were no cars there so I made my withdrawal and walked right straight down the road.

MR. O'DONNELL: May I approach the witness?

THE COURT: Yes, you may.

Q. Special Agent Gospodarek, I'm going to hand you now a number of photographs. Starting with Government Exhibit No. 3, can you identify that photograph?

A. Yes, I can.

Q. What is that?

A. This is a photograph of the lab barn taken from the edge of the barn.

Q. So the barn that you speak of is where the lab was found?

A. Yes, it's in the back of the picture. It covers a majority of the picture.

Q. The building in the lefthand corner of the photograph, what building is that?

A. I believe that's the far edge of the garage on that side.

[93] Q. I'm going to hand you now what's been marked as Government's Exhibit No. 4. Can you identify that, sir?

A. Yes, I can.

Q. What is that?

A. This will be, the far righthand middle corner of the photo will be where the lab was located and it also includes the water tank and the windmill that was nearby.

Q. All right. I'm going to hand you what's been marked as Government's Exhibit No. 5. Can you identify that?

A. Yes, that's the actual building that the lab was located in.

Q. All right. Depicted in Government's Exhibit No. 5 is a blue pickup backed into the barn. Do you see that, sir?

A. Yes, sir.

Q. is that blue pickup backed up into the area where you were standing on November 5th and November 6th when you looked into the lab?

A. Very closely, yes. That is the area we were in, the far corner of that building.

Q. So you would have been standing, basically, where the back of this truck is?

A. yes, we were in that area.

Q. I'm going to hand you Government's Exhibit 6. What is that?

A. That's the same picture except closer, and it [94] further depicts the truck backed in under the tin shed, and the openness of the shed and where we were standing.

Q. So, again, you would have been standing, on each occasion that you looked into the lab, basically at the back of where this pickup is?

A. Yes.

Q. Government's Exhibit No. 7, can you identify that?

A. This is a shot, a picture taken from the rear entrance of the home back toward the lab site. It shows the path back to the barn.

Q. No. 8?

A. That's the house itself, the farm house.

Q. Is that the back side or the front side?

A. That's the back side.

Q. No. 9?

A. This is the front side of the home.

Q. No. 10?

A. That's looking along the side of the home.

Q. Back toward the barn?

A. This is the barn. I recognize that. I didn't get on this side at all.

Q. So the structure in the front of the picture is the house?

A. Yes.

Q. And the structure in the back of the barn was the lab?

[95] A. Yes.

Q. No. 11?

A. That's the front of the home.

Q. And No. 12?

A. It's another shot of the lab site where the pickup backed into it.

Q. Let me ask you what was this pickup doing backed up to the lab entrance?

A. I wasn't there when the lab was seized but I assume that they were loading the lab into it.

Q. The agents would be loading the lab?

A. Yes, at that point.

MR. O'DONNELL: Pass the witness, Your Honor.

MR. McCULLOUGH: We'd like to change the order of cross, Your Honor.

THE COURT: Mr. Newlin, you may proceed.

MR. NEWLIN: Thank you, Your Honor.

MR. O'DONNELL: Your Honor, would the Court like to view the photos?

THE COURT: They haven't been admitted. Give them to counsel, please.

MR. O'DONNELL: Your Honor, I will at this time offer all of the photographs.

MR. NEWLIN: May we have a moment, Your Honor?

[96] THE COURT: Yes, you may.

MR. NEWLIN: Your Honor, could the Court withhold consideration of these until we finished our cross examination?

THE COURT: Yes, I indicated I would, Mr. Newlin.

MR. NEWLIN: All right, thank you, we'll proceed, Your Honor.

**CROSS EXAMINATION**

BY MR. NEWLIN:

Q. Agent Gospodarek, you said that you were the team leader of this group?

A. Yes, as far as the DEA personnel are concerned.

Q. And so you were in charge of this operation, is that correct?

A. No, sir.

Q. Who would have been in charge of it?

A. This was Special Agent Surovec's case.

Q. Are you a superior of Special Agent Surovec's, by any chance?

A. Yes.

Q. So although you were present and at the scene it was his case and he was in charge?

A. Let me elaborate on that. At the time on November 5th [97] and 6th, Agent Surovec was not present. Agent Surovec did not arrive until later, on the 6th or the 7th; probably on the morning of the 7th, if I remember correctly. I left on the 7th.

Q. When you first went onto this land did you know who owned the property?

A. No.

Q. Did you know what the boundaries of the property were?

A. No.

Q. On what date did you learn who owned the land?

A. The 6th.

Q. So if Agent Surovec in his affidavit said that on November 5th you had telephonically advised him that it was owned by Ronnie Dale Dunn and that in fact that you all procured information about Mr. Dunn, that would be incorrect?

A. Let me refresh my memory here. The actual knowledge of the ownership of the land came from the game warden, and that well could have been on the after-

noon of the 5th. The actual dimensions as to what the property consisted of and what not we would have gotten on the 6th, but we had no boundaries to go from. To the best of my recollection, whenever we contacted the game warden, whether it be the 5th or the 6th, was when we found out who owned the property. Then I did my subsequent criminal checks and record checks and [98] attempted to verify other information.

Q. Okay, sir, you first went to this farm location on November 5th, is that correct?

A. Yes, at night to make the entry on the property. I was there during the early afternoon of the 5th.

Q. Okay, sir, but your first entry onto the property was that evening?

A. yes, sir.

Q. So it is possible that you did in fact at the time that you went on the property already know who the owner of the property was, is that correct?

A. Yes, it is possible. I don't recall that specifically I know I did find out who did own it. That was my job.

Q. You found that out from game warden Warren Guthrie?

A. Yes, sir?

Q. And he told you at that time that it consisted of 198.1 acres?

A. I believe that he gave us the figure of the acreage. I don't remember the exact one but I do now know that exact figure.

Q. Okay, sir, did you seek anyone's authority to go onto this property?

A. No, sir.

Q. Have you had occasion to read the affidavit which was sworn to to secure the search warrant for this ranch?

[99] A. I may have read it over, yes.

Q. Do you recall whether you have or have not read it over?

A. I have read it in the past. I have not read it recently.

Q. Okay, sir. Now, knowing what you know now, when you first smelled the odor which you alleged to be the odor of phenylacetic acid, were you on the property owned by Ronald Dale Dunn?

A. To this time I can say I still do not know whether I was or wasn't.

Q. Do you have any idea, the drawing that you have there, how may acres is involved in that drawing?

A. No, sir, I do not.

Q. You have no approximation?

A. I have no idea how many acres were involved.

Q. Did you inspect the barn only because of the odor that you smelled?

A. No.

Q. So you would have inspected the barn if you had smelled nothing?

A. We would have gone that direction as we had seen the truck at the barn earlier in the day.

Q. So you are not relying on that odor or anything that you saw there, smelled there, as the basis for going to look [100] at this barn?

A. Well, certainly once the odor was coming from that direction it reinforced my wanting to look at the barn.

Q. Yes, sir, but I think you already stated that you were going to that barn anyway, is that correct?

A. We were heading in that direction, yes, sir.

Q. And you were going to go to the barn and try to see what was inside?

A. Yes. sir.

Q. And you had made no inquiry as to what the property boundaries were, et cetera, anything concerning this?

A. No.

Q. And in fact prior to attempting to secure a search warrant you participated in three entries into this piece of property, did you not? Or onto this piece of property?

A. Prior to the signing of the warrant, yes.

Q. There is some dispute, now, or some question as to whether or not at the time of the third entry as to whether or not the warrant had in fact been issued, is that correct?

A. Not in may mind there's not. I don't know when the warrant was signed and I was in there at approximately 7:00 o'clock the last time I went in there.

Q. Did you know that someone was attempting to secure a warrant for this property at that time?

A. Special Agent Surovec on the day of the 5th was [101] instructed to begin gathering the evidence to put into the affidavit for the warrant.

Q. And did you see to it that he was furnished, in fact, a legal description of this property?

A. Yes, I got that description from Warden Guthrie.

Q. Did you tender that directly to Agent Surovec?

A. I believe, if my recollection serves me correctly on this incident, the actual description was tendered to Surovec through another agent who read it to a secretary who took it in shorthand because it was lengthy.

Q. But that did describe the piece of property that you now know to be 198.1 acres?

A. Yes, Game Warden Guthrie did obtain documents that had the legal description on the face of it.

Q. So the search warrant that you sought was for that entire premise, 198.1 acres, is that correct?

A. Yes. The search warrant was sought for Mr. Dunn's property in that area, including the house and the barn.

Q. So even though you were seeking a search warrant for that piece of property you went ahead and went on the piece of property a third time, is that correct?

A. Yes. We had been seeking the warrant since the 5th.

Q. Now, as of the 5th, what facts did you have that would have—Prior to your first entry on the property what facts did you have to justify or to go and seek a warrant [102] before a magistrate?

A. We had the precursor chemicals being driven from Houston to the ranch. And then we found the missing beeper. And Mr. Dunn's criminal record and a prior arrest for manufacture was what started it. And the entry on the property was to gather the final piece of probable cause, which was the smell of the sight of the actual operation.

Q. In you experience as a DEA agent did you feel that that final bit of probable cause was necessary?

A. Well, without that it was circumstantial. With that it was a fact, in my opinion.

Q. And you felt it was within your power to go ahead and go on this property and seek some additional information?

A. Yes, I thought it was quite all right. I had done it before in other cases.

Q. Did you participate in any entries into this land after the time that the warrant was executed by the magistrate but prior to its execution?

A. I don't know the time of the signing of the warrant. I left on the Friday in the morning right before noon. Those are the only three times I went on the property, the 5th and the 6th. I left on the morning of the 7th.

Q. Do you have any knowledge whether or not other agents of the Drug Enforcement Administration or any law enforcement agency did go on prior to the execution of [103] the warrant?

A. Yes, I do have information that they did.

A. And they went on one more time and withdrew?

A. Well, I understand that they went on to the lab and then withdrew, yes.

Q. On the date of the 5th and 6th I believe you have named four persons, one being yourself, one being Agent Jacobs, one being Agent Thomas, and Martin Fite, who were present and had gone on the property. Were there any other persons?

A. That's not correct. Agent Jacob never went on the property with me. If he did go I didn't know about it. I went on the property the first time, Mr. Newlin, with HPD Officer Martin Fite. The second time I went on the property I went with Special Agent Thomas. The third and final time I went on to the property I was accompanied by Agent Thomas and two other agents from the Austin office. One I believe was Agent Stone, and I don't know the name of the third agent. It was a new female. I had just recently met her.

Q. Have you had occasion to see her here today?

A. No, sir.

Q. You say that you approached this barn after smelling the odor of phenylacetic acid. Could you describe that odor for the Court?

[104] A. It has a very distinct smell, somewhat of a sweetish smell, very sweet but very pungent and strong. It's impossible to describe in words until you've smelled it.

Q. Is it a solid or a liquid?

A. The phenylacetic acid we were dealing with here is a solid.

Q. Do you know what the amount of parts per billion for reception for you to understand and comprehend that it is phenylacetic acid?

A. No, I don't know that.

Q. Do you know what distances that it will carry in the air?

A. No.

Q. Can you differentiate between the smell of phenylacetic acid and phenylacetone?

A. I believe I can.

Q. And do you know what ranges or distances you can make those distinctions at?

A. No, sir.

Q. How was the wind on that evening, that being the evening of the 5th, your first entry on the property?

A. As I recall, very light if any, and the little breeze that there was, if I remember, I considered it to be coming – We had just recently had what we call a blue norther. I'm from up North. This is a new term for me. [105] I've been down here 10 years. But what they call a blue norther blowing, which is accompanied by generally light westerly or northwesterly winds. There was some breeze that night but not much wind.

MR. NEWLIN: May I approach the Exhibit, Your Honor?

THE COURT: Yes, you may.

MR.O'DONNELL: Agent, would it be possible for you to tell us approximately here which direction the wind was blowing, approximately which way is north?

THE WITNESS: Well, in my opinion north is out this way (indicating). The Farm to Market Road at the base where you enter the farm, I believe runs north and south. That's what I'll call it. I'll use that for my direction.

Q. (By Mr. Newlin): So you believe the wind was approximately in this direction from the back of the barn, blowing out, say, toward the water tank?

A. Well, like I say, the wind was very variable and I didn't pay much attention to it, but with those weather conditions I believe the wind would have been from the northwest, and it was very still in the trees and what not.

Q. Approximately how far were you from this barn when you detected this odor?

A. I would say I didn't step it off but anywhere from [106] 50 yards, something like that.

Q. Now, did you feel like you were on the property at that time, that it encompassed this entire farm? Were you clearly on the property?

A. Well, there were several fence lines there. I did not know which fence line depicted the end or the beginning of Mr. Dunn's property. I didn't know.

Q. But you did know it was Mr. Dunn's property somewhere there?

A. The house and supposedly those outbuildings belonged to Mr. Dunn, according to the information we received from Warden Guthrie.

Q. Now, you viewed this first lab action there through a crack in the wall, you said?

A. No, I did not.

Q. Okay. Excuse me. What was it?

A. We viewed the actual laboratory through a fish netting which hung from the top of the pole barn down to the fence, the gate.

Q. Did you have to use a flashlight to view this?

A. Yes.

Q. How many fences had you had to cross from the time that you smelled to the time that you were able to make this initial view?

A. Well, the fences run helter skelter in here, and [107] I know I crossed this one, down along in here, and over to this one—that would be three by the time I got to this point here. We were very careful. This took a long time. It was a lengthy process. I want to point that out to the Court, that trying to determine whether there was anyone home or not, not to be detected. So we crossed back and forth over in here. When we made the initial entry into the pole barn area we crossed what is a wooden fence, I believe, here, and it goes underneath this lean-to type of situation, and right inside that lean-to is the fence or the gate, the fishnetting, and right inside there, the back of it, is the laboratory.

Q. So you had to at least cross one fence here. Where was the locked gate that you discussed, the wooden locked gate?

A. The wooden locked gate is this right here, this black line (indicating).

Q. So it is actually under the roof line here?

A. Under the roof line.

Q. And it was actually locked?

A. Yes, it was locked.

Q. Did you cross that fence, that gate?

A. No.

Q. You just shined it and viewed in?

A. That's all that was necessary.

[108] Q. When you went around back were you able to look inside also?

A. No, you were able to look in through the crack here, and if I remember correctly there is an open portion to this barn on the back, and it's all open along the front. But as far as the laboratory is concerned it is a closed-in area with walls on all sides except for the front where the waist-high gate and the fishnet was.

Q. you went on this property originally at about 10:00 P.M., is that correct?

A. Somewhere in that neighborhood, yes.

Q. And about how long were you all on the property?

A. I would say approximately an hour and a half or longer.

Q. An hour and a half or longer.

A. Well, actually – Are you talking about – Let me ask you. Are you saying on the property – The whole creep or the whole surveillance or whatever you want to call this took a couple of hours. As far as being in the area of the lab, a matter of minutes. Once we determined there was no one in the truck, to look at the lab, just a matter of a few minutes down to the side and then we make our withdrawal.

Q. All right. Let's go to where you parked your car and from the time that you left your car. Where did you park your car?

* * *

[123] THE COURT: Okay. You may.

MR. McCULLOUGH: I'll put a triangle there to distinguish it from the "X".

Is that agreeable?

THE COURT: You may mark it, counsel.

MR. McCULLOUGH: Is this the place?

THE WITNESS: On that side of the building, yes.

Q. (By Mr. McCullough): Is that the approximate distance from the building?

A. No, I don't know what the approximate distance is. I just heard a motor when I got up by the building.

Q. Was it between this tank and the building?

A. It was near the building.

MR. McCULLOUGH: For purposes of the record I have place a triangle or a delta symbol in the location indicated by Agent Gospodarek. Is that a fair location?

THE WITNESS: That's a fair location.

Q. Can you give us within any limits how far you were from that largest pole barn where that triangle is located?

A. I was approaching it, maybe 10 feet. I don't know. I'm guessing. I didn't stop to take any notes.

Q. And at the time that you saw into the building with your flashlight you were within arm's reach or less of the structure itself?

[124] A. Yes.

Q. Now, the things you testified about, the smell of the phenylacetic and the viewing of what you believe to be a laboratory and a chemical process going on, was included in the affidavit for a search warrant for this ranch property?

A. I believe it was.

Q. Again, phenylacetic acid is not a controlled substance?

A. Correct.

Q. Did you enter on any of the three occasions you've testified about any buildings or rooms within buildings on this property?

A. No, we stayed to the outsides of all the buildings.

Q. The only entrance into any of the buildings would have been then when you were standing under the overhang of the pole barn on the occasion where you were looking in at what you thought was a lab?

A. Absolutely.

Q. The empty boxes that you said you saw were in the smaller pole barn, which is to the left in the diagram as shown?

A. Yes.

MR. McCULLOUGH: I pass the witness, Your Honor. I have another item of business with regard to this before we finish, and that is to put into evidence the [125] search warrant affidavit for the search warrant for the Blanco County property.

THE COURT: Mr. O'Donnell?

**REDIRECT EXAMINATION**

BY MR. O'DONNELL:

Q. Special Agent Gospodarek, once you smelled the odor on November 5, 1980, after you had gotten off the property that night did you call Special Agent Surovec and tell him what you had done?

A. Yes.

Q. Do you recall what you told him?

A. Not specifically.

Q. Do you recall the basic thrust of what you told him?

A. I told him we had seen the laboratory.

Q. Do you recall telling him anything about smelling the chemical odor?

A. Yes.

Q. What did you tell him about that?

A. I told him that as we approached the buildings we got a smell, we followed the smell up and found the laboratory.

Q. Did you tell him what your impression was when you smelled the odor?

A. I felt we had a laboratory.

Q. Did you feel like something was being manufactured?

[126] A. Absolutely.

Q. What?

A. Phenylacetone. That's what they had the chemicals for.

Q. Do you recall if you told Special Agent Surovec that?

A. I had a discussion with him. I didn't take notes and I don't remember exactly what I told him but I believe I told him we had a phenylacetone laboratory.

Q. Briefly I want to show you what's been marked as Government's Exhibit 14. Do you recognize that to be an accurate drawing of the barn where the lab was?

A. Yes, I do.

Q. Now, on each occasion, once on the 5th of November and once on the 6th of November, when you were peering into the laboratory where were you standing?

A. This area (indicating).

Q. Where is the gate that you were looking over?

A. This whole thing runs along here, the gate itself is right here (indicating).

Q. Is this the gate right here?

A. That is the gate.

Q. At the time you were looking into the lab the gate was closed?

A. Yes.

[127] Q. All right. So would you have been standing right outside the gate at this point?

A. I believe on both occasions we were in this area here. We could have been all over that area. I don't recall specifically where I was standing.

Q. But when you looked into the lab it was over the gate?

A. Yes. You could see all along right here.

Q. All right. Now, this portion up to the gate is an open area and is not enclosed in any way?

A. That's right.

Q. In other words, you can walk right up into it?

A. Yes, there is a small fence right here, one of those small wood fences.

Q. But once you get into this pen you can walk right up into where this gate is?

A. Yes, that's where the pictures where the—the truck was backed in there and there was nothing to obstruct it.

MR. O'DONNELL: Nothing further, Your Honor.

THE COURT: Mr. Newlin?

MR. NEWLIN: Thank you, Your Honor.

* * *

[149] MARTIN FITE,

called as a witness by the defendant, and having been duly sworn by the clerk, assumed the stand and testified as follows:

THE COURT: State your full name, please, sir.

THE WITNESS: Martin Fite, F-i-t-e.

THE COURT: Thank you.

**DIRECT EXAMINATION**

BY MR. NEWLIN:

Q. Mr. Fite, how are you employed?

A. City of Houston police department, narcotics division.

Q. How long have you been so employed?

A. I've been with the City about 10 years and about [150] six years broken service in narcotics.

Q. You are familiar with the investigation against Ronald Dale Dunn?

A. Yes, sir.

Q. And were you involved in the search and seizure that took place there on the 8th of November?

A. Yes, sir.

Q. Was that the first time that you had been on that piece of property?

A. No, sir.

Q. And when was the first time that you went on the piece of property?

A. I believe it was the evening of the 5th.

Q. That would have been approximately three days before?

A. Right.

Q. And who was you with at that time?

A. Special Agent Gospodarek.

Q. And what was your purpose for going onto the property?

A. To check and see if there was a laboratory in operation.

Q. What type of laboratory?

A. An amphetamine laboratory.

Q. Now, did you know at that time who owned this [151] piece of property?

A. No, sir, I do not.

Q. Do you know whether or not Agent Gospodarek knew at that time who owned this piece of property?

A. No, sir, I did not.

Q. Did you have any discussion concerning that?

A. The ownership of the property?

Q. Yes, sir.

A. No. sir.

Q. When did you first learn who was the owner of the property?

A. I believe it was the next morning.

Q. And who did you learn that from?

A. It may have been Gospodarek. I don't recall. It was brought up in conversation after somebody checked the title or grant or whatever it's called.

Q. After the entry on the 5th did you have another occasion to go on the premises prior to the execution on the 8th?

A. I believe I went on the 7th.

Q. And what time of day or night did you go on the 7th?

A. Shortly after dark. I don't know the hour.

Q. Who accompanied you on that occasion?

A. A chemist with the Drug Enforcement Administration.

Q. And what was the purpose of your entry at that time?

[152] A. To show the chemist what we had seen.

Q. Did you have occasion then to go and inspect the laboratory?

A. I don't know how you mean "inspect".

Q. Did you have occasion to go up—You said you wanted to show the chemist something. Did you show the chemist the laboratory?

A. Correct, yes.

Q. Do you see this drawing up here which is marked Government's Exhibit No. 14?

A. Right.

Q. Can you see it from there?

A. Not very well.

Q. You might need to step down if you would. On the occasion of the 7th when you went here with Chemist Goldston, could you tell me where you stood and where Mr. Goldston stood?

A. It would be right in this area here (indicating).

Q. Did you have occasion to enter through this opening here to inspect the reaction, et cetera, that was going on?

A No, sir.

Q. Were you under the same roof of this entire structure?

A. I believe there was an overhang that comes from about this wall here.

[153] Q. At that time there was a warrant in existence, was there not?

A. I don't know. It was a federal warrant being drawn up. I don't know when it was in existence.

Q. No one had told you prior to your going out there that there was in fact a federal warrant which had been issued for that premises approximately 24 hours before?

A. No, the last I heard I think I went back to Houston the day before and I knew that Agent Surovec was going to be drawing up the warrant but I don't recall anybody telling me if it was completely drawn up or not.

Q. When did you get to Johnson City?

A. Which time? The first time?

Q. Did you leave after the 5th?

A. Yes.

Q. And you returned?

A. Right. I returned the 7th.

Q. And you and Mr. Goldston had no discussion about the warrant?

A. No, I didn't discuss the warrant at all.

Q. Did persons besides yourselves accompany you in the general vicinity of the ranch?

A. Yes.

Q. And who accompanied you there?

A. There was a female DEA agent from Austin. I think [154] her name is Mitzi. I'm not real sure.

Q. And who else?

A. I believe Agent Thomas did. I'm not real sure on that either. He's a DEA officer.

Q. Were you in one car?

A. Yes.

Q. And so all four persons went there in one vehicle?

A. I believe so. There were a couple of vehicles in the area.

Q. In other words, you say in the area; would that be on this farm to market road that runs immediately by the ranch?

A. No, it would be on another road that intersects that one. I believe it was beyond the ranch.

Q. Just a road going into someone's property?

A. Right.

Q. Do you recall how many fences you had to climb over to get into the property?

A. Which time?

Q. On the date of the 7th.

A. Yes, I just went up the driveway.

Q. Did you suspect that anyone was there at the time?

A. I didn't know. I was going to take normal precautions.

Q. If you found someone there did you intend to effect [155] an arrest?

A. No, I wouldn't have any jurisdiction for arresting him at that time.

Q. I'm still somewhat unclear as to when you first learned that a warrant had in fact been executed for this premises?

A. You mean when the judge had signed it?

Q. Yes, sir. When did you learn that it existed?

A. Probably late Friday evening. I don't really recall.

Q. Friday being what date?

A. I believe that was the 7th.

Q. After you returned from—

A. From Houston.

Q. After your return from taking Mr. Goldston out here?

A. Right.

Q. Not prior to that time?

A. I don't think I had a conversation with anybody because we had driven back up from Houston. I remember that I had to take the chemist in. We just kind of got with them.

Q. When you met the chemist who was he with?

A. He was with several agents there at the motel.

Q. Do you know the agents' names?

A. No, I don't know too many of these guys that [156] work in this area.

Q. Do you know Agent Surovec?

A. Right.

Q. Was he present?

A. I believe he was.

Q. Do you know Agent Gospodarek?

A. Oh, yes.

Q. Was he present?

A. I don't think so. I don't recall.

Q. Did you go to a motel room?

A. Right. The one on the corner.

Q. You don't recall whose room that was?

A. Originally I think Gospodarek rented that room when we first came up.

Q. But at least you're certain that present there was Agent Surovec and Mr. Goldston?

A. Right, and Mitzi. I think the game warden was there. And two or three other people. I just don't recall who they are.

Q. At any time during any of your entries on to this property did you seek anyone's authority to go on the property?

A. No.

Q. And in total you went upon the property on three occasions?

[157] A. Correct.

MR. NEWLIN: Just a moment, Your Honor. (Brief pause.)

MR. NEWLIN: Pass the witness, Your Honor.

THE COURT: Mr. McCullough?

MR. McCULLOUGH: I have no questions.

MR. O'DONNELL: No questions.

THE COURT: All right. You may step down. (The witness, Robert Louis Surovec [*sic*: should be Martin Fite], was excused.)

# In the Supreme Court of the United States

UNITED STATES, PETITIONER

*v.*

RONALD DALE DUNN

ORDER ALLOWING CERTIORARI. Filed June 23, 1986.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

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